

1949 Geneva Conventions - Common Article 3

Persons taking no active part in the hostilities...shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) taking of hostages;

(c) outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court....

1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War

Article 147. Grave breaches...shall be those involving any of the following acts, if committed against persons or property protected by the present Convention [i.e., civilians]: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

*Geneva Convention Relative to the Protection
of Civilian Persons in Time of War (Common
Article 3)*

opened for signature August 12, 1949, entered into force Oct. 21, 1950, 75
U.N.T.S. 287

ARTICLE 3.

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

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(d) the passing of sentences and the carrying out of execution without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

31; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949, 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949, 75 U.N.T.S. 135 [hereinafter GPW]; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 U.N.T.S. 287 [hereinafter GC and Geneva Civilian Convention]. Each convention has an article identifying "grave breaches" of that convention. Those concerning GPW and GC follow:

GPW, art. 130: Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, compelling a prisoner of war to serve in the forces of the hostile power or wilfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention.

GC, art. 147: Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

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2. Note that the new legislation generally incorporates Geneva provisions by reference. Many other states also incorporate the laws of war, crimes against humanity, and genocide by reference. See, e.g., Jordan J. Paust, *It's No Defense: Nullum Crimen, International Crime and the Gingerbread Man*, 60 ALBANY L. REV. 657 (1997) (addressing legislation in Australia, Bangladesh, Belgium, Canada, Ethiopia, Finland, France, Germany, Great Britain, Israel, Mexico, the Netherlands, Sweden, Yugoslavia); cf. Christopher Blakesley, Report, *reprinted in* 25 DENV. J. INT'L L. & POL. 233 (1997); Edward Wise, Report, *id.* at 313.

3. Under the new legislation, is it possible to prosecute former Nazis accused of war crimes? Is it possible to prosecute Bosnian-Serbs accused of war crimes committed against other Bosnians? ^{Yes} No

4. Article 146 of the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 75 U.N.T.S. 287, creates an obligation "to enact any legislation necessary to provide effective penal sanctions for persons committing...any...grave breaches"? Has the new legislation met that obligation? How might those accused not covered by the new legislation be prosecuted for violations of the laws of war in the United States?

5. Is it possible under the new legislation for the U.S. to comply with another obligation in Article 146 of the Geneva Civilian Convention to "take measures necessary for the suppression

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1977 GENEVA PROTOCOL I

Article 52--General protection of civilian objects

1. Civilian objects shall not be the object of attack or of reprisals. Civilian objects are all objects which are not military objectives as defined in paragraph 2.

2. Attacks shall be limited strictly to military objectives. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

3. In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used.

1977 GENEVA PROTOCOL I

Article 57 -- Precautions in attack

1. In the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects.

2. With respect to attacks, the following precautions shall be taken:

(a) those who plan or decide upon an attack shall:

(i) do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection but are military objectives within the meaning of paragraph 2 of Article 52 and that it is not prohibited by the provisions of this Protocol to attack them;

(ii) take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury

to civilians and damage to civilian objects;

(iii) **refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;**

(b) **an attack shall be cancelled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;**

(c) **effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit.**

3. When a choice is possible between several military objectives for obtaining a similar military

advantage, the objective to be selected shall be that the attack on which may be expected to cause the least danger to civilian lives and to civilian objects.

4. In the conduct of military operations at sea or in the air, each Party to the conflict shall, in conformity with its rights and duties under the rules of international law applicable in armed conflict, take all reasonable precautions to avoid losses of civilian lives and damage to civilian objects.

5. No provision of this article may be construed as authorizing any attacks against the civilian population, civilians or civilian objects.

Are Rebel Forces Bound by the Laws of Armed Conflict?

Are they bound by Common Article 3 of the
1949 Geneva Conventions?

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